HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 1235 of 2002 (SB)

Prantiya Sinchai Niyamit Karya Prabhari Dainik Shramik Mahaparisar Uttaranchal …… Petitioner

Versus

State of Uttaranchal & others …… Respondents.

Writ Petition No. 1086 of 2002 (SB)

Prantiya Sinchai Niyamit Karya Prabhari Dainik Shramik Mahaparisar Uttaranchal …… Petitioner

Versus

Secretary, Irrigation Department & others ……Respondents.

Writ Petition No…… of 2003 (SS)

Rajendra Singh Negi & others …….. Petitioner

Versus

State of Uttaranchal & others …….. Respondents

Sri C.K. Sharma, & Sri M.C. Pant Advocate for the petitioners.
Standing Counsel for the respondents

Dated: 14.01.2004

Hon'ble Rajesh Tandon J,

Heard the learned counsel for the parties.

By the present writ petition the petitioners have prayed for the issue of a writ, order or direction in the nature of certiorari quashing the Government order dated 26.8.1999,which imposes ceiling on dearness allowance payable to the petitioners.

Briefly facts giving rise to the present writ petition are that the petitioners are work charge employees of Irrigation Department. The Government vide order dated 26.8.99 imposed ceiling on dearness allowance payable to the petitioners. Relevant paragraph of the said G.O. is quoted below:

निम्न प्रकार पुर्नरीक्षित किये जाने की श्री राज्यपाल महोदय सहर्ष स्वीकृति प्रदान करते हैं।

क्रं0	पूर्ववर्ती वेतनमान	संहत वेतनमान की अधिकतम	संस्तुत पुर्नरीक्षित वेतनमान	संहत वेतनमान की अधिकतम	अधिकारियों के पदनाम जिनके द्वारा निर्धारण किया जायेगा
1	2	3	4	5	6
1.	750—940	1700	2550—55—2660—60—3200	3200	अ0 अभि0
2.	775—1025	1700	2610—60—3150—65—3540	3540	अधि0अभि0
3.	825—1200	2200	2750—70—3900—75—4400	4400	अधि0 अभि0
4.	950—1500	2200	3050—75—3950—80—4590	4590	अधि0 अभि0
5.	975—1600	2500	3200—95—4900	4900	मु0अभि0स्तर
6.	1200—2400	2500	4000—125—7000	6000	मु0अभि0स्तर
7.	1400—2300	2500	4500—125—7000	7000	मु0अभि0स्तर
8.	1600—2660	3000	5000—150—8000	8000	मु0अभि0स्तर

Further by order dated 1.2.01 while granting dearness allowance the following ceiling was imposed:

शा0 सं0 5892/99–27–सिं–7–88 22/91 दिनांक 26.8.99 द्वारा निर्धारित संहत वेतन की अधिकतम सीमा के अर्न्तगत ही कार्यप्रभारित कर्मचारियों को वेतन सीमित रखा जायेगा।

Similar ceiling was also imposed regarding payment of bonus to the work charge employees. Relevant paragraph of G.O. dated 1.3.2001 is quoted below:

कार्यप्रभारित कर्मचारियों को दैनिक वेतन भोगी कर्मचारियों की भॉति बोनस अनुमन्य है अतः कार्यप्रभारित कर्मचारियों के लिए मासिक परिलब्धियों 1200/– प्रतिमाह मानी जायेगी। चाहे उनकी वास्तविक परिलब्धियॉ जो भी हों इन कर्मचारियों को देय बोनस की धनराषि रु0 1200 30/30.4 अर्थात रु01181/ पूर्णाकित होगी।

The petitioners have submitted that ceiling imposed as mentioned above is in contravention of Articles 14 and 21 of Constitution of India and the same is liable to be declared as ultra virus to the Constitution of India.

The Division Bench of this Court has passed order on 10.5.2002 in Writ Petition No. 392 (SB) of 2002 to the following effect:

"Notice on behalf of the opposite parties has been accepted by the Chief Standing Counsel, who prays for and allowed four weeks time to file counter affidavit, list thereafter.

In the mean time, the opposite parties shall make payment of salary to the petitioners from the current month ignoring the ceiling prescribed."

The purpose of dearness allowance is to neutralize increase in the costs of living due to rise in the price. Apex Court in the case of C.V.K.U. Sahakari Mandli vs. G.S. Barot, AIR 1980 SC 31, has defined the purpose of grant of dearness allowance. The observations are quoted below:

The law thus that dearness allowance is intended to neutralise a portion of the increase in the cost of living. Though 100 per cent neutralisation is not advisable as it will lead to inflation, full neutralisation may be permissible only in the case of the lowest class of employees. The management is entitled to complain if the neutralisation is more than 100 per cent.

The dearness allowance cannot be clubbed with the pay. Pay is not a bounty but it is a right under Article 21 of the Constitution of India and it is also covered under Article 21 from the judgment of the Apex Court in the case Kapila Hingorani (supra).

The petitioners' counsel also drew the attention of the Court towards the Government Order dated 1.1.2000 issued by the State of U.P. by which restriction imposed with regard to ceiling on dearness allowance on the work charge employees have been withdrawn. The Government order reads as under:

अधोहस्ताक्षरी को यह कहने का निर्देष हुआ है कि वेतन समिति की संस्तुतियों पर शासन द्वारा समयक विचारोपरान्त यह निर्णय लिया गया है कि वित्तीय नियम संग्रह खण्ड –6 के प्रस्तर 667, 668 व 669 में कार्यप्रभारित अधिष्ठान से सम्बन्धित नियुक्ति की

व्यवस्था को समाप्त किया जाए। अतः राज्यपाल महोदय वित्तीय नियम संग्रह खण्ड –6 के उक्त प्रस्तर 667, 668 व 669 की व्यवस्था को तात्कालिक प्रभाव से समाप्त किये जाने की स्वीकृति प्रदान करते हैं।

Clause 668 of Work- charged Establishment Condition of Employment reads as under:

668. In all cases previous sanction of the competent authority as laid down in Volume I of the Handbook or in the departmental manuals of orders is necessary which should specify in respect of each appointment (1) the consolidated rate of pay (2) the period of sanction, and (3) the full name (as given in the estimate) of the work and the nature of the duties on which the person engaged would be employed."

The petitioner has also argued that there cannot be arbitrariness in the salary in as much as any curtailment of pay will amount to unequal treatment as held in the case of Kumari Shrilekha Vidyarthi etc. vs. State of U.P. & others AIR 1991 SC 537. The Apex Court has observed as under:

"The preamble of the Constitution of India resolves to secure to all its citizens Justice, Social economic and political and Equality of status and opportunity. Every State action must be aimed at achieving this goal. Part IV of the Constitution contains 'Directive Principles of State Policy' which are fundamental in the governance of the country and are aimed at securing social an d economic freedoms by appropriate State action which is complementary to individual

Fundamental rights guaranteed in Part III for protection against excesses of State action, to realise the vision in the Preamble. This being the philosophy of the Constitution, can it be said that it contemplates exclusion of Art. 14 –non-arbitrariness which is basic rule lo law-from State actions in contractual field when all actions of the State are meant for public good and expected to be fair and just? We have no doubt that the Constitution does not envisage or permit unfairness or unreasonableness in State actions in any sphere of its activity contrary to the professed ideals in the Preamble. In our opinion, it would be alien to the Constitutional Scheme to accept the arguments of exclusion of Art.14 in contractual matters. The scope and permissible grounds of judicial review in such matters and the relief which may be available are different maters but that does not justify the view of its total exclusion. This is more so when the modern trend is also to examine the unreasonableness of a term in such contracts where the bargaining power is unequal so that these are not negotiated contract but standard from contracts between unequal"

Apex Court in the case Kapila Hingorani vs State of Bihar 2003 (7) AIC 18 SC has held that right to get salary is a fundamental right and there cannot be any curtailment upon it. The Apex Court has held as under:

"The right to development in the developing countries is itself a human right. The same has been made a part of WTO and GATT. In the World Trade Organization, Law, Practice, and Police (Oxford) by Mathusushitaq Schoenbaum and Mauroidis at page 389, it is stated:

> *The United Nations has proclaimed the existence of a human right to development. The right refers not only to economic growth but also to human welfare, including health, education, employment social security, and a wide-range of other human needs. This human right to development is vaguely defined as a so-called third-generation human right that cannot be implemented in the same way as civil and political human rights. Rather, it is the obligation of states and intergovernmental organizations to work within the scope of their authority to combat popery and misery in disadvantaged countries.*

The matter may be considered from another angle. While the State expects the industrial houses and multi national companies to take such measures which would provide a decent file to the persons living in the society in general and to their employees in particular and in that premise it too much to ask the State of practice what it preaches? This gives rise to another question. Can the State be so

insensitive to the plight of its own citizens in general and the employee of the public Sector undertaking in particular?

The Court in a situation of this nature is obligated to issue necessary directions to mitigate the extreme hardship of the employees involving violation of human rights of the citizens of India at the hands of the State of Bihar and the government companies and corporations fully owner or controlled by it. A right to carry on business is subjects to compliance of constitutional obligations as also limitations provided for in the Constitution.

Financial stringency may not be a ground for not issuing requisite directions when a questions of violation of fundamental right arises. This Court has been highlighting this aspect in the matters concerning fundamental rights and maintenance of ecology. See Rural Litigation and Entitlement Kendra and others vs. State of Uttar Pradesh and others, AIR 1987 SC 359 Municiap Council Ratlam (1980)4 SCC 162 and B.L. Wadhera vs.Union of India AIR 1996 SC 2969. In All India Imam Organization and others vs. Union of India and others 1993 (3) SCC 584 this Court held:

> *…..Much was argued on behalf of the Union and the Wakf Boards that their financial position was not such that they can meet the obligations of paying the Imams as they are being paid in the State of Punjab. It was also urged that the number of*

mosque is so large that it would entail heavy expenditure which the Boards of different State would have not be able to bear. We do not find any correlation between the two. Financial difficulties of the institution cannot be above fundamental right of a citizen. If the Boards have been entrusted with the responsibility of supervising and administering the wakf then it is their duty to harness resources to pay those persons who perform the most Importent duty namely of leading community prayer in a mosque the every purpose for which it is created.

……..….. ……..…… ……..……..…

The State of India are welfare States. They having regard to the constitutional provisions adumbrated in the Constitution of India and in particular Part IV thereof laying down the Directive Principles of the State Policy and Part IVA laying down the Fundamental Duties are bound to preserve the practice to maintain the human dignity."

In the case Secretaqry, Haryana State Electricity Board vs. Suresh and others, 1999 (2) SLR 1, the Apex Court has held as under:

"In this context reference to the Constitution Bench decision of this Court in Nakara's case (D.s. Nakara and others vs. Union of India, AIR 1983 SC 130, seems to be rather apposite. This Court stated that democratic socialism aims to end poverty, ignorance, disease and inequality of opportunity. The primary impact of

socialism as a matter a fact is to offer and provide security of life so that the citizens of the country may have two square meals a day, and maintenance of a minimum standard of life, it is expected, would lead to the abridgment of the gap between the have-s and have not-s. The feudal exploitation and Draconian concept of law ought not to outweigh the basic structure of the Constitution, or its socialistic status.

Our is a socialist State as the Preamble depicts and the aim of socialism, therefore, ought to be to distribute the common richness and the wealth of the country in such a way so as to sub-serve the need and the requirement.

of the common man. Article3 39 is a pointer in that direction. Each clause under the Article specifically fixes certain social and economic goal so as to expand the horizon of benefits to be accrued` to the general public at large. In particular reference to Article 39 (a) it is seen that the State ought to direct its policies in such manner so that the citizens men and women equally, have the right of an adequate means of livelihood and it is in this perspective again that the enactment in the statute book as notices above (The Contract Labour (Regulation & Abolition) Act 1970) ought to be read and interpreted so that social and economic justice may be achieved and the constitutional directive be given a full pay."

In view of the aforesaid facts and circumstance the Government order dated 26.8.1999 so far as it related to the imposition of ceiling on dearness allowance require reconsideration by the respondents in view of the observations made above as well as in view of the Government Order dated 1.1.2000 issued by the State of U.P.

In the mean time respondents are directed to pay salary to the petitioners ignoring the ceiling prescribed in view of the order of Division Bench dated 10.5.2002.

The writ petitions are accordingly allowed. There will be no order as to costs.

(Rajesh Tandon J,)

14.01.2004

Dhyani.